

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

BOOT HILL AUTO RECYCLING CO.;

Hardin County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- **34**

NO. 2010-SW- **29**

NO. 2010-WW- **14**

TO: Philip Lagerquist
Owner
Boot Hill Auto Recycling Co.
10190 Hwy. 65
Iowa Falls, IA 50126

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Boot Hill Auto Recycling Co. (Boot Hill Auto Recycling) for the purpose of resolving violations related to illegal solid waste disposal, including the illegal open burning of solid waste and illegal wastewater disposal. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Carl Berg, Field Office 2
Iowa Department of Natural Resources
2300 15th St. S.W.
Mason City IA 50402-1443
Phone: 641-424-4073

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B,

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Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Boot Hill Auto Recycling is engaged in the business of auto salvage at a property located at 10190 Hwy. 65, Iowa Falls, Iowa. Boot Hill Auto Recycling has approximately 800 vehicles on site. Automotive fluids are removed from vehicles and the vehicles are stored for automotive parts. The facility is covered by National Pollutant Discharge Elimination System (NPDES) Stormwater Permit No. 6698-6536 through September 10, 2010.

2. On March 2, 2010 the DNR conducted a stormwater inspection at Boot Hill Auto Recycling. On that date, the DNR observed evidence of the illegal open burning of trade wastes in a burn barrel on the property. The DNR also documented a floor drain in the area where auto fluids are drained from vehicles. The floor drain is connected to a septic system. Septic tanks shall not be connected to area drains. Additionally, the disposal of chemical wastes or greases into a septic tank in quantities that might be detrimental to the bacterial action in the tank is prohibited.

3. On March 24, 2010, the DNR issued a Notice of Violation to Boot Hill Auto Recycling.

4. The DNR documented illegal open burning of solid waste by Boot Hill Auto Recycling in 2003 and at that time notified Boot Hill Auto Recycling of the applicable prohibition on the burning of trade wastes.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567

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IAC 23 2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented violations of these provisions by Boot Hill Auto Recycling.

4. Iowa Code section 455B.173(3) authorizes the Commission to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 6 under this definition includes "Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as Standard Industrial Classifications 5015 and 5093."

5. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above-stated facts disclose a violation of these provisions.

6. NPDES Stormwater Permit No. 6698-6536, provides that the permittee must develop and implement a "pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the DNR. The above-stated facts disclose a violation of these provisions.

7. 567 IAC 69.5(1) "d" states that septic tanks shall not be used for the disposal of chemical wastes or grease in quantities which might be detrimental to the bacterial action in the tank or for the disposal of drainage from roof drains, foundation drains, or area drains. The DNR has documented violations of this provision by Boot Hill Auto Recycling.

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V. ORDER

THEREFORE, the DNR orders and Boot Hill Auto Recycling agrees to the following:

1. By August 1, 2010, Boot Hill Auto Recycling shall pay a penalty in the amount of \$3,500.
2. Boot Hill Auto Recycling shall immediately plug any and all floor or area drains connected to the onsite wastewater treatment system.
3. By September 15, 2010, Boot Hill Auto Recycling shall permanently disconnect any and all floor or area drains connected to the onsite wastewater treatment system.
4. By September 15, 2010, Boot Hill Auto Recycling shall submit a stormwater pollution prevention plan.
5. Boot Hill Auto Recycling shall conduct annual storm water inspections and sampling as required by its stormwater discharge permit.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$3,500. The administrative penalty is determined as follows:

Economic Benefit – Boot Hill Auto Recycling has achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs. The failure to fully comply with stormwater and wastewater requirements results in the avoidance of labor and disposal costs. Based upon these factors, \$500 is assessed for this factor.

Gravity – The illegal open burning of waste tires releases toxins that endanger human health and the environment. The discharge of automotive fluids to an onsite wastewater

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treatment system can compromise the effectiveness of the treatment system and can greatly impact groundwater by the release of these chemicals to the groundwater. Such release poses a risk to human health and the environment. Based upon these considerations, \$2,000 is assessed for this factor.

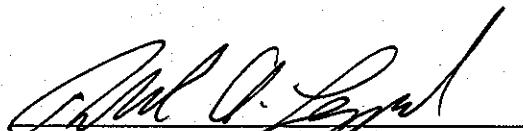
Culpability – Boot Hill Auto Recycling is in a business which requires routine waste disposal including the disposal of waste automotive fluids. Boot Hill Auto Recycling has been previously notified of the regulations related to solid waste disposal and the prohibition on the open burning of trade wastes. Based upon these considerations, \$1,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Boot Hill Auto Recycling. For that reason Boot Hill Auto Recycling waives its rights to appeal this administrative consent order or any part thereof.

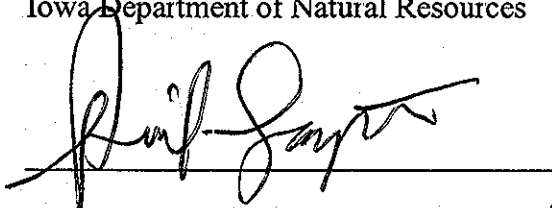
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.191 and 455B.307. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 27 day of
July, 2010.



BOOT HILL AUTO RECYCLING CO.

Dated this 20 day of
July, 2010.

Phil's Boot Hill Auto

Field Office #4; VIC; VII C.1; IC 1

Boot Hill Auto Recycling Co Closed in 2007
Phil's Boot Hill Auto is a new Corporation